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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

ENTROPIC COMMUNICATIONS,
LLC,

Plaintiff,

v.

COX COMMUNICATIONS, INC.;
COXCOM, LLC; and COX
COMMUNICATIONS CALIFORNIA,
LLC,

Defendants.

Case No. 2:23-cv-1049-JWH-KES

**COX DEFENDANTS' OPPOSITION
TO REQUEST FOR JUDICIAL
NOTICE IN SUPPORT OF
ENTROPIC COMMUNICATIONS,
LLC'S MOTION TO DISMISS COX
DEFENDANTS' AMENDED
COUNTERCLAIMS PURSUANT TO
RULE 12(b)(6)**

1 COX COMMUNICATIONS, INC.,
2 COXCOM, LLC, AND COX
3 COMMUNICATIONS CALIFORNIA,
4 LLC,

Counter-Claimants,

5 v.

6 ENTROPIC COMMUNICATIONS,
7 LLC; MAXLINEAR
8 COMMUNICATIONS LLC; AND
9 MAXLINEAR, INC.

Counter-Defendants

I. INTRODUCTION

Defendants and Counterclaim-Plaintiffs Cox Communications, Inc., CoxCom, LLC, and Cox Communications California, LLC (collectively, “Cox”) hereby oppose the Request for Judicial Notice in Support of Entropic Communications, LLC’s Motion to Dismiss Cox Defendants’ Amended Counterclaims Pursuant to Rule 12(b)(6) (“RJN”) (DE 229). Cox opposes Entropic’s RJN because Entropic (1) improperly seeks judicial notice of exhibits for the truth of the matters asserted; and (2) improperly asks the Court to rely on two summary judgment orders by a different district court, at a different stage in the case, and involving different parties, which are not referenced in any of the pleadings, involve disputed facts, and simply do not satisfy the standard for judicial notice.

For these reasons, the Court should deny the RJN with respect to Exhibits A and B.

II. ARGUMENT

Judicial notice should only be taken of facts “not subject to reasonable dispute” in that they are either (1) generally known within the territorial jurisdiction of the trial court; or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b). “However, ‘courts generally cannot take notice of findings of fact from other proceedings for the truth [of the matter] asserted therein because these findings are disputable and usually are disputed.’” *Shapiro v. Hasbro, Inc.*, No. CV1502964BROAJWX, 2015 WL 13357442, at *3 (C.D. Cal. Sept. 24, 2015), *aff’d*, 653 F. App’x 568 (9th Cir. 2016) (citation omitted).

Entropic asks the Court to take judicial notice of (1) Magistrate Judge Payne’s report and recommendation regarding Entropic’s motion for summary judgement of no license defense based on DOCSIS (Exhibit A); and (2) Judge Gilstrap’s Order adopting Judge Payne’s report and recommendation (Exhibit B). More specifically, however, Entropic “asks the Court to take notice of the fact that the District Court for COX’S OPPOSITION TO RJN IN SUPPORT OF ENTROPIC’S MOTION TO DISMISS COX’S

1 the Eastern District of Texas recently issued an order granting summary judgement
2 that three of the patents asserted in this case (U.S. Patent Nos. 8,792,008, 9,825,826,
3 and 10,135,682) are not subject to the DOCSIS License.” (DE 229 at 2.).

4 Entropic’s RJN is improper on its face as it asks the Court to take judicial notice
5 of the “truth of the facts recited” in Exhibits A and B. Specifically, Entropic seeks to
6 rely on Exhibits A and B to argue the Asserted Patents are not DOCSIS essential. (DE
7 228-1 at 14.). This attempt to seek judicial notice for the truth of the matter asserted
8 on a Rule 12(b)(6) motion to dismiss is clearly improper. *E.g., Lee v. City of Los*
9 *Angeles*, 250 F.3d 668, 690 (9th Cir. 2001) (“On a Rule 12(b)(6) motion to dismiss,
10 when a court takes judicial notice of another court’s opinion, it may do so not for the
11 truth of the facts recited therein, but for the existence of the opinion, which is not
12 subject to reasonable dispute over its authenticity.”); *Tripharma, LLC v. First Fruits*
13 *Bus. Ministry LLC*, No. 821CV01806JVSJDEX, 2023 WL 2695476, at *1 (C.D. Cal.
14 Feb. 15, 2023); *Gerritsen v. Warner Bros. Entm't Inc.*, 112 F. Supp. 3d 1011, 1032
15 (C.D. Cal. 2015) (“Of course, the Court takes judicial notice only of the fact that
16 Exhibits B–J were filed and of their contents; ‘[t]he truth of the content, and the
17 inferences properly drawn from them ... is not a proper subject of judicial notice under
18 Rule 201.’”) (citation omitted). For this reason alone, Entropic’s RJN should be
19 denied.

20 In addition, Entropic’s RJN improperly asks the Court to consider material
21 beyond the pleadings for its Rule 12(b)(6) motion without demonstrating that material
22 meets the standard for judicial notice. Entropic cannot make this showing.

23 In general, a district court may not consider material beyond the pleadings
24 when evaluating a Rule 12(b)(6) motion without treating it as a motion for summary
25 judgment, with two exceptions. *See* Fed. R. Civ. P. 12(b)(6); *Chavez v. United States*,
26 683 F.3d 1102, 1108 (9th Cir. 2012). First, a court may consider “material which is
27 properly submitted as part of the complaint” on a motion to dismiss without
28 converting it into a motion for summary judgment. *Lee v. City of Los Angeles*, 250

1 F.3d 668, 688–89 (9th Cir. 2001). Second, the Court may take judicial notice of
2 matters of public record if the facts are not “subject to reasonable dispute.” *Id.* at 688–
3 89; *see* Fed. R. Evid. 201(b).

4 Neither exception applies here. First, Exhibits A and B, and the purported facts
5 therein, were not submitted with Cox’s pleading or even referenced in Cox’s pleading.
6 Second, the factual findings in the Eastern District of Texas court’s rulings regarding
7 the essentiality of the Asserted Patents are disputed. Indeed, the rulings are based
8 upon a different record, disputed facts, and arguments that are inappropriate here
9 when deciding the sufficiency of the pleadings. Thus, Entropic’s request for judicial
10 notice of Exhibits A and B is improper and should be rejected. *See Lee v. City of Los*
11 *Angeles*, 250 F.3d 668, 690 (9th Cir. 2001) (holding courts may take judicial notice
12 of “*undisputed* matters of public record,” but generally may not take judicial notice
13 of “*disputed* facts stated in public records”).

14 **III. CONCLUSION**

15 For the foregoing reasons, the Court should deny Entropic’s RJN with respect
16 to Exhibits A and B submitted with tis Motion.

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